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ILLINOIS COMMERCE COMMISSION

December 18, 1996

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William F. Caton
Acting Secretary
Federal Communications Commission
Washington D.C. 20554

Re: In the Matter of Federal-State Joint
Board on Universal Service
CC. Docket No. 96-45

Dear Mr. Caton:

Enclosed please find for filing with the Commission the original and sixteen copies of the Comments of the Illinois Commerce Commission in response to the Recommended Decision of the Federal-State Joint Board on Universal Service. As indicated on the enclosed certificate of service, I have served a copy of these comments to each member of the Joint Board and the Joint Board Staff, in accordance with Appendix G of the Joint Board's Recommended Decision.

Please acknowledge receipt of this filing by date-stamping and returning the enclosed duplicate copy of this letter in the envelope provided.

Sincerely,

A handwritten signature in cursive script, reading "Myra L. Karegianes".

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MLK/dwm
Enclosures

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CERTIFICATE OF SERVICE

I, Myra L. Karegianes, an attorney, hereby certify that copies of the Comments of the Illinois Commerce Commission in response to the Recommended Decision of the Federal-State Joint Board on Universal Service, Federal Communications Commission CC Docket Number 96-45, were served upon the persons on the attached Service List, by overnight mail, postage prepaid, on this 18th day of December, 1996.


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Docket No. 96-45

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
) CC Docket No. 96-45
Federal-State Joint Board on)
Universal Service)
)

COMMENTS OF
THE ILLINOIS COMMERCE COMMISSION

On November 8, 1996, the Federal-State Joint Board ("Joint Board") issued its Recommended Decision on Universal Service ("Recommended Decision"), whereupon the Federal Communications Commission ("FCC") issued a Notice of Proposed Rulemaking ("NPRM") seeking comment on the Joint Board's recommendations. The Illinois Commerce Commission ("ICC") submits its comments to the FCC regarding the Joint Board's Recommended Decision.

The modification, expansion and creation of new federal universal service support mechanisms are of interest to the ICC because of the potentially significant impact they will have on consumers and telecommunications providers in Illinois. The ICC is not able to determine, from the Recommended Decision, how the Joint Board's recommendations will affect Illinois consumers and telecommunications carriers. The Recommended Decision is short on specifics, but its proposed universal service programs appear overly broad and the cost excessively high. The ICC therefore strongly opposes adoption of the Joint Board's Recommended Decision.

Because of insufficient time to properly address the expansive measures proposed by the Joint Board, the ICC hereby

submits a general analysis of the inadequacies of the Joint Board's recommendations. The Recommended Decision:

- * Exceeds the intent and spirit of the Telecommunications Act of 1996 ("Federal Act") by creating more extensive subsidies than envisioned by Congress.
- * Lacks identification of the overall estimated cost of the proposed programs to telecommunications consumers and providers and the assumptions upon which the cost estimates are based. Fails to show the implicit and explicit costs of current universal service programs, including subsidies from access charges.
- * Neglects to cap most subsidy programs, thereby creating potentially huge financial burdens on telecommunications consumers.
- * Concludes inappropriately that carriers that only provide access to interstate service providers should contribute to federal Universal Service funding.
- * Overreaches in its assertion that federal universal service funding can be based on the intrastate revenues.
- * Misinterprets the Federal Act to require subsidies for internal connections to all classrooms.
- * Fails to complete its recommendations and cost estimates of the health-care portion of the universal service program.

I. Recommended Decision Greatly Overreaches

The Recommended Decision greatly exceeds not only the intent of Congress, but also the spirit of Section 254 and the Federal Act. The Recommended Decision would extend the reach of federal government intervention far beyond the clear intent of Congress. While the Federal Act attempts to lower prices for consumers through market-based competition, the Recommended Decision attempts to create several expansive funding entitlements under

the Universal Service program, creating broader subsidies than contemplated by Section 254.

The Joint Board's recommendations also extend the FCC role beyond that contemplated by the Federal Act. While Section 254(h)(1)(B) provides that, for schools and libraries, the FCC shall determine the discounts for interstate services and the States shall determine the discounts for intrastate services, the Joint Board recommends that the FCC determine and fund discounts on both interstate and intrastate services. This would inappropriately expand the size of the interstate universal service mechanism. States should determine and fund any intrastate service discounts to schools and libraries pursuant to Sections 254(f) and 254(h)(1)(B).

The FCC should also limit its role with regard to additional universal service programs. The FCC should set and fund only relatively high benchmarks (or low discounts) regarding Section 254(b)(3), which requires that rates offered to rural and high cost areas be reasonably comparable to those offered in urban areas. States could then establish additional intrastate programs and intrastate funding for rural and high cost areas based on local conditions if appropriate. The FCC should also adopt only general guidelines regarding Section 254(h)(1)(A), which requires that rates available to rural healthcare providers in a State be comparable to rates charged for similar services in urban areas of that State. State Commissions are the appropriate entity to determine the comparability of rates in urban and rural

areas of a given state and to fund such programs pursuant to Section 254(f) and Section 254(h)(1)(A).

Finally, the Recommended Decision expands the current subsidy scheme, with its related deficiencies (incalculable costs¹ and market distortions²), without either a factual showing that consumers need these services or an analysis of how these new subsidies and entitlements would mitigate the deficiencies in the current subsidy program.

For these reasons, separate and apart from our objections as noted below, the ICC strongly opposes the Recommended Decision.

II. The Recommended Decision Lacks Crucial Financial Data

In its Recommended Decision, the Joint Board proposes the creation of new universal service support programs³ and the modification of existing support programs⁴ to satisfy the

¹In the current subsidy scheme, most funding is implicit and thus incalculable. In the proposed subsidy scheme, although funding will be explicit, the costs of the proposed programs have not been adequately estimated and thus remain unknown.

²Universal support mechanisms subsidize rates to some classes of customers at the expense of others thereby distorting consumption patterns. Universal support mechanisms also subsidize some providers leading to inefficiencies in their production operations and distorted price signals to their potential competitors.

³The creation of universal support programs for schools, libraries and healthcare providers. Para. 459.

⁴The modification of funding (eligibility, collection and distribution) of universal support to low-income and high-cost area customers and the change in structure of the current low-income assistance program (e.g., prohibiting states from limiting certain subsidized service connections). Para. 273-356 and 417-425.

requirements of Section 254 of the Federal Act. Such recommendations would almost certainly increase funding obligations. However, in most cases,⁵ the Joint Board provides no estimates regarding the expected size of the universal service fund needed to finance these programs, the current level of implicit or explicit subsidies in these areas or even an aggregate estimate of the present and future costs for all subsidies. Without such data, the ICC cannot properly evaluate the costs and benefits of the Joint Board's recommendations.⁶

In addition, the Joint Board provides no analysis on the interrelationship between its universal service recommendations and access charge reform. The ICC finds it imperative to examine universal service reform and access charge reform simultaneously in order to properly evaluate the impact of the Joint Board's recommendations on telecommunications consumers and providers in Illinois.

III. No Cap on the Amount of Assistance Provided to Most Programs

With the exception of assistance to schools and libraries,

⁵Assistance to schools and libraries is the exception. The Joint Board has recommended that it should be capped at \$2.25 billion per year. The Joint Board has recommended that this program begin during the 1997-1998 school year. Para. 556.

⁶The ICC notes that similar concerns were expressed by Commissioner Chong. (See, Separate Statement of Commissioner Rachelle B. Chong on Recommended Decision of the Federal-State Joint Board on Universal Service, Re: Federal-State Joint Board on Universal Service, CC Docket 96-45, November 7, 1996, pp. G12-13).

the Recommended Decision does not identify a cap for the amount of assistance, or the funds required to finance, the majority of universal support programs. The ICC believes that such an approach would create open ended funding obligations on telecommunications providers and their end users. The cost to society could far outweigh the incremental benefits to subsidized end users.

IV. Carriers that Only Provide Access Service Should Not Contribute to Federal Universal Service Funding

The Recommended Decision concludes that carriers that only provide access to interstate service providers should be classified as telecommunications carriers that provide interstate telecommunications services. Consequently, such carriers would be required to contribute to federal universal service funding pursuant to Section 254(d) of the Federal Act. The ICC disagrees. The Federal Act defines a "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public".⁷ Access service is not provided for a fee directly to the public or in such a manner as to be effectively available directly to the public. Therefore, the Joint Board overreaches when it includes access within the scope of the definition of interstate telecommunications service.

⁷47 U.S.C. Section 3 (b) (46).

V. Federal Universal Support Programs Should Not be Funded Using Intrastate Revenues of Providers of Interstate Services

The Recommended Decision asserts that funding for certain federal universal service programs⁸ can be based on the intrastate portion of a telecommunications carrier's revenues. This exceeds the FCC's authority under Section 2(b)(1) of the Communications Act of 1934, which limits the FCC's jurisdiction with respect to intrastate telecommunications services. Also, Section 254 clearly provides a role for both the federal government and state governments in universal service. The Federal Act provides for contribution to federal programs by every "carrier that provides interstate telecommunications services"⁹ and for contribution to state universal service programs by every "carrier that provides intrastate telecommunications services".¹⁰ Allowing the federal universal service program to be assessed on the intrastate revenue base available to fund state universal service programs would undercut the Congressional intent to provide for a state role in the provision of universal service.

Finally, the Joint Board's approach would interfere with the goal of competitive neutrality. A carrier that would be

⁸The Joint Board recommends that both intrastate and interstate revenues be assessed for school, library and rural health care provider programs but reserves its position on high-cost and low-income programs. Para. 817.

⁹47 U.S.C. Section 254 (d).

¹⁰47 U.S.C. Section 254 (f).

considered purely intrastate under the Recommended Decision would not make any contribution to the federal universal fund on the basis of its intrastate revenues, while a carrier determined to have sufficient interstate nexus would be required to contribute to the federal fund on its intrastate revenues.

VI. Funding Internal Connections to Every Classroom Goes Beyond Congress' Intent

The Joint Board concludes that schools may receive discounts on charges for internal connections to all classrooms, including installation and maintenance. (Paras. 473-4). The Board further argues that installation and maintenance of internal connections are services, not facilities. The ICC disagrees on both counts.

The intent of Congress in deciding that "...classrooms... should have access to advanced telecommunications services..." can be met by ensuring that there is access at each campus, including off-site rooms and space in office buildings used for elementary and secondary education. There is no indication that Congress envisioned that telecommunications companies would finance the interior wiring of each classroom on a campus. Section 254(h)(2)(A) requires that the FCC's rules to enhance access to advanced telecommunications and information services must be economically reasonable. Until such time as the FCC has finalized its cost estimates, it has no basis on which to make a determination that the costs of funding internal connections to all classrooms are economically reasonable.

VII. Health Care Recommendation is Missing

The health care portion of the universal service program has not been completed, and cost estimates have not been presented nor a budget contemplated for such a program. Without such critical information, it is impossible to evaluate the costs and benefits of this program to telecommunications end users. In addition, as discussed in Section I of these comments, the expansive federal role contemplated by the Joint Board's Recommended Decision with regard to assistance programs for rural healthcare providers is inappropriate.

VIII. Recommendations

Section 254(a)(2) of the Federal Act specifies the requirements the FCC must meet by May 8, 1997. Specifically, Section 254(a)(2) states that:

The Commission shall initiate a single proceeding to implement the recommendations from the Joint Board required by paragraph (2) and shall complete such proceeding within 15 months after the date of enactment of the Telecommunications Act of 1996. The rules established by such proceeding shall include a definition of the services that are supported by Federal universal support mechanisms and a specific timetable for implementation. Thereafter, the Commission shall complete any proceeding to implement subsequent recommendations from any Joint Board on universal service within one year after receiving such recommendations.


Based on this provision of section 254, the ICC recommends that the FCC limit the rules promulgated on May 8, 1997 to a conservative definition of the services to be supported by Federal universal support mechanisms, general guidelines and at most a temporary, capped amount of support for each federally

funded program. The FCC should also adopt a reasonable timetable according to which it will implement these programs. The FCC should establish a schedule for the Joint Board to evaluate an alternative definition of services that may be supported by Federal universal assistance mechanisms and the costs associated with implementing such assistance programs. The Joint Board should also be instructed to evaluate how various funding mechanisms and access charge reform could affect different classes of customers and carriers in each state. Finally, the Joint Board should be instructed to evaluate how universal service assistance can be allocated back to the states in a fair and adequate manner. Based on this additional information, the Joint Board would submit subsequent recommendations to the FCC for consideration. The FCC would have a year to implement such subsequent recommendations.

Once the Joint Board has provided the FCC with the needed cost information and its additional recommendations, and states have had the opportunity to evaluate the costs and merits of additional recommendations, the FCC could, pursuant to section 254(c)(1), revisit the definitions of universal service it has adopted for the various programs, and include additional services and functionalities to be supported under one or more of the programs it would implement.

Respectfully submitted,

ILLINOIS COMMERCE COMMISSION


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